THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 4th day of October,2007

W.P.No.3535 of 2006

Between:-

S.M. Rajeshwar Rao … Petitioner

and

The Commissioner and Director of
School Education, Government of
Andhra Pradesh, Secretariat Buildings,
Hyderabad … Respondent

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.3535 of 2006

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to and in connection with the Order in Rc.No.1682/H3/2005, dated 2-7-2005 of the respondent and to quash the same as arbitrary and illegal; consequently to direct the respondent to correct the entry of Date of Birth of the petitioner in the records maintained by them as 20-1-1957 instead of 9-7-1955 with all consequential benefits.

It appears, petitioner sought for declaration of his date of birth as 20-1-1957 instead of 9-7-1955 and in that connection, filed a suit in O.S.No.159 of 2001 on the file of learned Principal Junior Civil Judge, Kamareddy. Respondent herein was also a party to the said suit being the 3rd defendant. The suit was decreed on 28-6-2004. When the petitioner sought for correction of his date of birth as per the decree of the civil Court, the impugned Order dated 2-7-2005 was passed stating that instructions in Circular Memo No.20548/448/FRI/04,
dated 13-10-2004 of Finance and Planning Department, Government of Andhra Pradesh, Hyderabad were issued in consonance with the opinion of the Supreme Court in similar cases and hence, the alteration of Date of Birth cannot be effected in all school records as per the existing Rules. It is unfortunate that such a stand was taken by the respondent, who was also a party to the said suit. Once a decree is passed by the civil Court and the respondent is a party to the said proceedings, the decree is binding on it and it is bound to correct the

Date of Birth of the petitioner in the concerned records. In this regard, learned counsel for the petitioner also relied upon a judgment reported in **K.M. SASTRY v. DIRECTOR, POST GRADUATE CENTRE, ANANTAPUR**[1] wherein it was held as under:

> "7. The petitioner could have certainly asked for rectification of his service record also in the suit instituted by him. Had he done that there would have been no room for controversy. But he did not do so. Two questions accordingly arise in this Writ Petition, viz., (i) whether the respondent is entitled to ignore the decree on the ground that it does not direct the rectification of the service record and that it is merely a declaratory decree; and (ii) whether the present Writ Petition is barred and is not maintainable.
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> 16. Bearing the above principles in mind, let us see whether the present Writ Petition is hit by the rule contained in O.II, R.2, CPC. The relief sought for in this Writ Petition is not for correction of the service-record. Had that been the case, the bar my have been attracted. But, in this Writ Petition, the petitioner is only seeking for a direction to the respondent to honour, respect and implement the decree of the Civil Court. While we agree that no plaintiff can achieve indirectly what he could not achieve directly by camouflaging the reliefs or by a clever and ingenious draftsmanship, we are not satisfied that the present case is of a like nature. We are, therefore, not satisfied that this Writ Petition is either barred or is liable to be dismissed on the ground that the petitioner is seeking to obtain a relief herein which he could not obtain by way of a suit."

In view of the above, the impugned Order is liable to be set aside and is accordingly set aside. Since the decree is passed only as to rectification of the Date of Birth in the records of defendants 2 to 5 in the suit, it is binding of them. As stated above the respondent herein is the 3rd defendant in the suit. Therefore, the respondent is directed to make necessary entries in all the concerned records and note the Date of Birth of the petitioner as 20-1-1957 instead of 9-7-1955. This exercise shall be completed within a period of two months from the date of receipt of a copy of this Order.

Accordingly, the Writ Petition is allowed. No order as to costs.

04-10-2007

prk

[1] AIR 1982 AP 176